

P.S.
Covered Boat moorage

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT DENIED BY
THE CITY OF GIG HARBOR TO
CHARLES M. LANE

CHARLES M. LANE,

Appellant,

v.

TOWN OF GIG HARBOR,

Respondent.

SHB No. 129

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being a request for review to the issuance of a conditional shoreline management substantial development permit; having come on regularly for hearing before the Shorelines Hearings Board on the 10th day of May, 1974, at Lacey, Washington; and appellant Charles M. Lane appearing through his attorney, George Gagliardi, and respondent Town of Gig Harbor appearing through its attorney, David H. Johnson; and hearing examiner present at the hearing being Gayer

1 Dominick; and the Board having considered the transcript of the testimony,
2 the exhibits, contentions of the parties, records and file herein and
3 having entered on the 28th day of August, 1974 its proposed Findings of
4 Fact, Conclusions of Law and Order; and the Board having served said
5 proposed Findings, Conclusions and Order upon all parties herein by
6 certified mail, return receipt requested and twenty days having elapsed
7 from said service; and

8 The Board having received no exceptions to said proposed Findings,
9 Conclusions and Order; and the Board being fully advised in the premises;
10 now therefore,

11 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
12 Findings of Fact, Conclusions of Law and Order, dated the 28th day of
13 August, 1974, and incorporated by this reference herein and attached
14 hereto as Exhibit A, are adopted and hereby entered as the Board's
15 Final Findings of Fact, Conclusions of Law and Order herein.

16 DONE at Lacey, Washington this 25th day of September, 1974.

17 SHORELINES HEARINGS BOARD

18 Walt Woodward
19 WALT WOODWARD, Chairman

20 Robert E. Beaty
21 ROBERT E. BEATY, Member

22 W. A. Gissberg
23 W. A. GISSBERG, Member

24 Robert F. Hintz
25 ROBERT F. HINTZ, Member

26 Chris Smith
27 CHRIS SMITH, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Having considered the transcript of the testimony, the exhibits and
2 contentions of the parties, and being fully advised, the Board makes and
3 enters these

4 FINDINGS OF FACT

5 I.

6 In August, 1972, Charles M. Lane (hereinafter Appellant) applied
7 for and received permission from various federal and state agencies to
8 build a private boat moorage facility annexed to his private property
9 in Gig Harbor Bay, Washington. The Town of Gig Harbor issued its
10 substantial development permit therefore and such moorage was thereafter
11 constructed by Appellant.

12 II.

13 Subsequent thereto, Charles M. Lane began to build a boat cover
14 for his moorage after having received a building permit from the Town of
15 Gig Harbor.

16 III.

17 On October 23, 1973, the Town of Gig Harbor revoked the building
18 permit and requested that Mr. Lane remove that part of the boat cover
19 which had already been erected. Grounds for the revocation of the
20 permit were, among other things, failure to comply with the Shoreline
21 Management Act.

22 IV.

23 Subsequently, Mr. Lane applied to Respondent, Gig Harbor, for a
24 substantial development permit to allow him to construct the proposed
25 boat cover.

6
27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

V.

On January 28, 1974, at a public hearing of the Gig Harbor Council, following discussion by interested parties, Appellant's application for a shoreline permit was denied. The primary reason for the denial of the application appeared to be one of aesthetics and the fact that the development would block or impair the marine view of upland owners and residents. The Town of Gig Harbor, through its representatives, felt that the boat cover, as proposed, was aesthetically detrimental to the harbor. It was from this failure to receive a permit that Mr. Lane is here appealing.

VI.

The proposed boat cover is designed to be approximately 50 feet long, 31 feet wide, and slightly in excess of 15 feet high, with a cover of aluminum, and open on the sides with nine stanchions of 2 x 6's on each side. The location of the proposed boat cover is on the west shore of Gig Harbor Bay, within the incorporated area of the Town of Gig Harbor. It is located directly in front of several commercial establishments and lies in close proximity to a pier open to the public, and belonging to the Shoreline Restaurant, which lies immediately adjacent to the other commercial establishments, in front of which Mr. Lane's pier and proposed boat cover lie.

VII.

There is one other privately owned boat cover in the same area of the Gig Harbor shorelines. Such boathouse is old and decrepit. The boathouse was built a long time ago and there is no evidence that it complied with or ever was subjected to any permit requirements. An

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 adjacent, large, commercial moorage facility does have boat covers
2 which were constructed many years ago.

3 VIII.

4 The Town of Gig Harbor, since the passage of the Shoreline
5 Management Act, has granted no permits to construct boathouse covers.

6 IX.

7 There is conflicting testimony as to whether the proposed boat
8 cover is aesthetically unpleasing. Mr. Lane contends that it is not,
9 and the Respondent found that it is unpleasing. One room of the adjacent
10 restaurant seats 150 people and is at water level elevation. The proposed
11 boat cover structure would block much of the marine view of the patrons
12 of the restaurant.

13 X.

14 The substantial development permit was denied on January 28, 1974.
15 As of that date, there had been no adoption of goals and policies or
16 other elements of the master programs either by the Planning Commission
17 or the representatives of the Town of Gig Harbor for the shorelines
18 therein. Thus, there was no ascertainable or recognizable master
19 program as of the date of the denial of the permit.

20 X.

21 Any Conclusion of Law hereinafter recited which should be deemed
22 a Finding of Fact is hereby adopted as such.

23 From the foregoing Findings of Fact the Board draws the following

24 CONCLUSIONS OF LAW

25 I.

6 RCW 90.58.020 reads in part:

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 [T]hat unrestricted construction on the privately owned
2 or publicly owned shorelines of the state is not in the best
3 public interest; and therefore, coordinated planning is
4 necessary in order to protect the public interest associated
5 with the shorelines of the state while, at the same time,
6 recognizing and protecting private property rights consistent
7 with the public interest.

8 The same section goes on to say:

9 In the implementation of this policy the public's
10 opportunity to enjoy the physical and aesthetic qualities
11 of natural shorelines of the state shall be preserved to
12 the greatest extent feasible consistent with the overall
13 best interest of the state and the people generally.

14 The Legislature has concluded, therefore, that public interest is
15 more important than private interest in shoreline management considerations.
16 The Town of Gig Harbor, through its representatives, represent the public
17 interest in this matter. The Town of Gig Harbor, through its
18 representatives, finds the proposed boat cover of Mr. Lane aesthetically
19 unpleasing, and therefore, adverse to the public's opportunity to enjoy
20 the shorelines. We agree with such conclusion.

21 II.

22 It is our conclusion that aesthetics is a major consideration in
23 shoreline management determinations, and although aesthetics are
24 admittedly open to subjectivity, based on the facts of this case where
25 the private definition of aesthetics is in conflict with the public
26 definition of aesthetics, the public definition must prevail in order
27 to comply with the purposes of RCW 90.58.020 and the Department of
Ecology guidelines.

28 III.

29 Appellant, in closing argument, contends that he will be discriminated
30 against if his permit for a covered moorage is denied because other

31 FINDINGS OF FACT,
32 CONCLUSIONS OF LAW AND ORDER

1 covered moorages have been constructed and are now in existence in the
2 Gig Harbor Bay. Our response to that contention is that RCW 90.58.270
3 of the Shoreline Management Act validates and makes lawful certain of
4 such structures constructed in the navigable waters of the state prior
5 to December 4, 1969. If Appellant's argument was followed, the result
6 would be to expand the heretofore unregulated shoreline uses. Such an
7 interpretation would lead to a statute having high sounding and
8 exemplary phrases, but without practical application or regulatory
9 effect.

10 IV.

11 Our review of the question of whether the permit is consistent with
12 the master program "so far as can be ascertained" (RCW 90.58.140(1)(a)
'3 (iii)) is necessarily limited to the status of the master program as of
14 the date of the denial of the permit by the local government. At that
15 time Gig Harbor's master program was not ascertainable.

16 V.

17 The specific permit which is the subject matter of this review was
18 properly denied, and in accordance with the principles set forth herein,
19 a permit should not be granted.

20 VI.

21 Any Finding of Fact which should be deemed a Conclusion of Law
22 is hereby adopted as such.

23 Therefore, the Shorelines Hearings Board issues this
24
25

6
27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

ORDER

The denial of a shoreline management permit for the construction of a boat cover in Gig Harbor by Charles M. Lane is affirmed.

DATED this 28th day of August, 1974.

SHORELINES HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

Robert E. Beaty
ROBERT E. BEATY, Member

W. A. Gissberg
W. A. GISSBERG, Member

Robert F. Hintz
ROBERT F. HINTZ, Member

Chris Smith
CHRIS SMITH, Member

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER